

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

ACADEMY LLC D/B/A PHIL LONG FORD
OF CHAPEL HILLS¹,

Employer,

and

Case 27-RC-8320

INTERNATIONAL UNION OF OPERATING
ENGINEERS LOCAL NO. 9,

Petitioner.

DECISION AND DIRECTION OF ELECTION

On April 19, 2004, the International Union of Operating Engineers Local No. 9 filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent certain employees of Academy LLC d/b/a Phil Long Ford of Chapel Hills, located at 1565 Automall Loop in Colorado Springs, Colorado. Krista L. Zimmermann, a hearing officer of the National Labor Relations Board, conducted a hearing on April 28, 2004. Following the hearing, the parties filed briefs.

The sole issue to be resolved in this case relates to the appropriate scope of the unit. The Petitioner seeks to represent only the technicians and the service porter employed in the main service department at the Employer's facility.² The Employer contends that because of the community of interest

¹ The name of the Employer appears as stipulated at hearing.

² Although the petition referenced the position of "janitor", the Employer classifies employees performing janitorial work as "service porters."

shared by the main service technicians, the quick lane service technicians, and the apprentices in both classifications, and the community of interest between those employees and all five service porters (not just the service porter primarily assigned to the main service area), an election must be directed in a unit including the main service technicians, the quick lane service technicians, all apprentices, and all service porters working at the Employer's facility. I conclude for the reasons fully enunciated below that the petitioned-for unit is not appropriate and direct an election in the broader unit proposed by the Employer which I conclude is the smallest appropriate unit. ³

Under Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing on April 28, 2004 are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of section 2(6) and (7) of the Act and that it is subject to the jurisdiction of the Board. Specifically, the Employer is a Colorado Limited Liability Corporation engaged in the retail sales and service of

³ The Petitioner did not state a position on the record or in its post-hearing brief regarding its willingness to proceed to an election in a unit different from that for which it petitioned. In the absence of a stated position, it is assumed that the Petitioner is willing to proceed to an election in any unit determined to be appropriate. If the Petitioner declines to participate in an election in the broader unit, it shall be permitted to withdraw its petition without prejudice upon written notice to me within 10 days from the date of this decision or, if applicable, from the date the Board denies any request for review of the unit scope findings in this decision. **Independent Linen Service Company of Mississippi**, 122 NLRB 1002, 1005 (1959).

automobiles. During the past 12 months, the Employer had gross retail sales valued in excess of \$500,000, and during that same period of time, it purchased and received at its Colorado facility goods valued in excess of \$5,000 directly from manufacturers located outside the State of Colorado.

3. The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

5. It is appropriate to direct an election in the following unit of employees:

INCLUDED: All main service technicians, quick lane service technicians, apprentices, and service porters employed by the Employer at its facility located at 1565 Automall Loop in Colorado Springs, Colorado.

EXCLUDED: All office clerical employees, guards, supervisors as defined by the Act, and all other employees.

STATEMENT OF THE CASE

1. Background

The Employer is engaged in the retail sale and service of automobiles. The service department, which is the only department at issue in this case, consists of “main service” automotive technicians, “quick lane service”

automotive technicians, apprentices,⁴ service porters, and service consultants.⁵

All of the technicians work in one large service facility that is divided into two areas by a main driveway. When a customer enters the main driveway, the customer is greeted by the service consultant who enters information about the customer and his/her needs in the computer. The service consultant then dispatches the vehicle to either the main service drive or the quick lane service drive. Both the main service drive and the quick lane service drive have their own bay door entrances. Customers who have been to the facility before and know that they need quick lane service may go directly to the quick lane bay doors.

There are 22 technicians and 1 apprentice in the main service area, and 6 technicians and 2 apprentices in the quick lane area. There are also 5 service porters in the service department. Finally there are 11 service consultants.⁶ Mark Marshall, Parts and Service Director, oversees the service department and all employees within that department. He is assisted by Ernie Lanning, Service Manager, and Jerry Todd, Parts Manager.⁷ Marshall and Lanning oversee the

⁴ In the record and in briefs “apprentice”, “intern” and “apprentice/intern” are used interchangeably. For purposes of this decision, I shall refer to these employees as “apprentices”.

⁵ These employees are also referred to as “service advisors.” They speak directly with customers, intake the vehicles, and direct the vehicle to either the main service or the quick lane service area. The Petitioner does not seek to represent these service consultants and the Employer does not contend that they should be included in the unit found appropriate, so I shall exclude them from the unit.

⁶ The record shows that 3 of the service consultants who work at the quick lane drive take orders and dispatch vehicles only to the quick lane. The other 8 service consultants can dispatch vehicles to either the main service or to the quick lane.

⁷ Although the parties did not stipulate as to the supervisory status of Marshall and Lanning, the undisputed record testimony is that each performs supervisory functions on a regular basis, including hiring, firing, and disciplining of employees. The record also establishes that both

service department and directly supervise Roy Keiser, the Shop Foreman Tech and Team Leader for the main service area; Tim Thompson, the other Team Leader for main service area; Bruce Schneider, the Team Leader for quick lane service area;⁸ and all other technicians, apprentices, and the service porters.

A. Main Service Technicians and Quick Lane Technicians

The service technicians, both in the main area and the quick lane area, perform repair and maintenance work on all vehicles brought to the facility. The technicians from both areas have varying skill levels and engage in similar or the same work each day. The main service technicians generally are responsible for major repair work and tend to have a higher level of skill and/or certification than the quick lane technicians. The quick lane technicians are responsible for maintenance work, warranty work, and light repair jobs that take less than two hours and tend to have less skill and/or certification than the main service technicians.⁹ The technicians are categorized in “A” “B” and “C” classifications in

individuals set schedules, grant raises, lay off, and directly supervise employees in the service department. Accordingly, I find that Marshall and Lanning are supervisors within the meaning of Section 2(11) of the Act, and I shall exclude them from the unit found appropriate. The record contains no information about the potential supervisory status of Todd, as the parts department is not at issue in this proceeding. The Petitioner and the Employer agree that the parts department employees should not be included in any unit found appropriate.

⁸ Again, the parties did not specifically stipulate to the status of Team Leaders. However, no evidence was presented by either party that the Team Leaders possess and exercise any supervisory duties, and it appears that the parties’ understanding was that Team Leaders are statutory employees who perform the exact same duties as the other technicians in the shop. Additionally, there is no record evidence and no contention by either party that Keiser, by virtue of his added title of Shop Foreman Tech, exercises greater authority than the other Team Leaders. Accordingly, I find that these Team Leaders are employees under the Act and are properly included in the unit found appropriate.

⁹ The record establishes however, that at least one quick lane technician is highly certified as an Automotive Service Excellence (ASE) master technician, emissions certified, and max air conditioning certified. This witness testified that he is aware that he could earn a higher rate per

both the main service area and the quick lane area with the “A” technicians being the most skilled and the “C” technicians being the least skilled.¹⁰

Both the main service area and quick lane area are equipped with the same large equipment such as brake lathes, tire balancers, flush machines, and NGS (computer diagnostic machines). The quick lane area has an emissions machine, which the main service area does not, and the main service area has a lift that services extremely large vehicles, which the quick lane area does not; otherwise, the two areas are equipped with the same larger equipment. The record shows that if a main service technician needs to do an emissions test, he will simply cross the lane and use that particular machine. Similarly, if a quick lane technician is working on a large vehicle, he will perform whatever repair or maintenance is necessary by using the lift for large vehicles in the main service area. Further, if one of the large pieces of equipment on either side is not functioning or is being used, a main service technician will use the equipment on the quick lane side and vice-versa.

As mentioned above, the main service technicians primarily work on vehicles that require major repair work, as opposed to maintenance. However, if a vehicle is assigned to a main service technician, he will be required to “clear the ticket”, which means that he is required to do all the jobs listed on the work ticket. Once he completes any major repair work, he will also perform the

hour if he transferred to the main service area, but he enjoys the quick lane duties, which include more customer contact and the opportunity to train the apprentices.

¹⁰ In the record the Parts and Services Director also referred to the classifications as “1”, “2” and “3”.

maintenance work such as oil changes or balancing and rotating the tires, rather than move the vehicle to a quick lane technician. However, if a quick lane technician is working on a vehicle performing normal maintenance or light repair work and he discovers a major problem with the vehicle, he will inform a service consultant, who will contact the customer and have the vehicle moved to the main service area. Again, the function of the quick lane area is primarily to do the simpler jobs that require two hours or less.

In the course of performing daily duties, most main service and quick lane technicians speak frequently regarding work issues. The record shows that quick lane technicians regularly seek assistance from the more highly skilled main service technicians and that this occurs on an average of combined total of an hour a day for all quick lane technicians.

The record shows that permanent transfers between the quick lane side and main service side have occurred, although it is not known exactly how often or how recently. Specifically, the record reflects that at least two main service technicians have transferred into the main service area from the quick lane side and one main service technician has transferred into the quick lane area.

Normally, work assignments are based on the volume of the shop. For example, if a vehicle comes in that needs an alignment and the main service technicians are busy, then the quick lane technicians will do it. Similarly, if a vehicle needs an emissions test done and the quick lane technicians are busy, then a main service technician will handle it. Thus, it appears that, although there may be different skill levels between the main service area and the quick

lane area, many of jobs overlap, in that they can be and are performed by either main service technicians or quick lane technicians, depending on customer needs.

Both main service and quick lane technicians are required to provide their own tools, the value of which ranges from \$10,000 to \$30,000. All technicians are offered in-house training and training at outside schools. They are all given safety and hazard training.

The hours for main service technicians are from 7:30 or 8:00 a.m. to 5:00 p.m. Monday through Saturday, while the hours for quick lane technicians are scheduled variously from 7:00 a.m. to 7:00 p.m., Monday through Saturday. The longer hours for the quick lane area are for customer convenience and in order to compete with businesses that offer similar “quick” services, such as Jiffy Lube. For the same reason, the quick lane service area does not close for lunch, even though the main service area does close for a lunch break. The wage range for the main service technicians is \$12 to \$25 an hour and the wage range for the quick lane technicians is from \$9 to \$16 per hour. All technicians are paid on a flat rate for the time it takes to do a particular job and all employees are paid weekly.¹¹ All employees receive the same fringe benefits, such as health insurance, vacation time, holiday time and 401(k) plan. The record establishes that all technicians wear uniforms; a shirt and pants in blue, red and gray that are

¹¹ This is in accordance with an established national flat rate standard. For example, an oil change is charged at 3/10 of an hour of work for both classifications of technicians.

provided by the Employer. The quick lane uniforms also have a small patch that indicates that they are quick lane technicians.¹²

The Employer conducts monthly staff meetings for its employees that are held during the noon hour on a Wednesday. The main service area closes at lunch, but the quick lane area remains open throughout the day. For this reason, the majority of attendees are the main service technicians. The record reflects that Ty Cook, the service porter who works primarily in the main service area, normally attends these meetings; however, the meetings are open to all service department employees, and the record shows that quick lane technicians and the other porters have also attended these monthly staff meetings. These meetings are conducted in the employee breakroom, which all employees at issue use for lunch and rest breaks.

B. Apprentices

The apprentice position is an entry-level position. The Employer uses the apprenticeship program to train employees to become a higher-level technician, i.e. a quick lane technician or a main service technician at its facility. In part, the training consists of apprentices working alongside the technicians in the main service area and the quick lane area. The apprentices also receive the generalized training given to the technicians from both areas.

¹² The main service Team Leader/Shop Foreman testified that his uniform, although similar in color and style to the other uniforms, also has pinstripes on it, to show that he is the shop foreman.

The Employer has only one apprentice training program for the entire facility. The record does not reflect the length of the apprenticeship training program. Upon completion of the apprentice program, a person can be hired into either the main service area or the quick lane areas. The record does not indicate the wage rate of the apprentices, but establishes that they are paid a straight hourly wage, not an hourly rate applied against pre-determined time allotments for various tasks, as is the method of payment for the non-apprentice main service and quick lane technicians.

C. Service Porters

Five service porters are responsible for maintaining the entire service area by cleaning floors, emptying trash, emptying oil barrels, and generally keeping the area clean. The service porters also transport vehicles between the service drive and the main service area or between the quick lane service area and the service parking lot. The service porters are paid hourly and the amount they make depends on their length of service. The wage range for service porters is between \$8 and \$11 per hour. The record shows that one service porter, Ty Cook, works almost exclusively for the main service area, cleaning and maintaining that area. For this reason, Cook transports cars less often than the other four service porters. However, all service porters have the same job description and perform the same basic functions. Cook has the most seniority of the service porters. When Cook is away on vacation or sick leave, one of the other porters will fulfill his duties by working primarily in the main service area. Parts and Services Director Marshall testified that Cook spends more than 90%

of his time in the main service area, but that all service porters assist each other “constantly” throughout the day in cleaning and maintaining the main service and quick lane service areas.

2. Analysis and Findings

The Board in **Overnite Transportation Company**, 322 NLRB 723 (1996), stated:

Section 9(b) of the Act provides that the Board ‘shall decide in each case whether...the unit appropriate for the purposes of collective bargaining shall be the employee unit, the craft unit, plant unit, or subdivision thereof.’ The plain language of the Act clearly indicated that the same employees of an employer may be grouped together for purposes of collective bargaining in more than one appropriate unit. For example, under Section 9(b), the same employees who may constitute an appropriate employer wide unit may also constitute an appropriate unit if they are a craft unit or a plantwide unit. The statute further provides that units different from these three or ‘subdivisions thereof,’ also may be appropriate. It is well settled then that there is more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. (Citations omitted.)

In deciding the appropriate unit, the Board first considers the union’s petition and whether that unit is appropriate. If that unit is appropriate, the inquiry into the unit ends. A union is not required to request representation in the most comprehensive or largest unit of employees of an employer unless “an appropriate unit compatible with that requested unit does not exist”. **P.**

Ballentine & Sons, 141 NLRB 1103 (1963). Thus, the first issue to be decided in this matter is whether the petitioned-for unit is an appropriate one under Board law; not whether a more comprehensive unit, such as that proposed by the Employer herein, would be a better or more appropriate unit. If a petitioner’s unit

is found to be inappropriate, the Board may consider the parties' alternative proposals for an appropriate unit. See **Overnite Transportation Company**, at 817, citing **P.J. Dick**, 290 NLRB 150 (1988). In defining the appropriate bargaining unit, the Board's focus is on whether the employees share a community of interest.

A number of factors are important in analyzing community of interests, including bargaining history, work contacts among the several groups of employees, extent of interchange of employees, centralization of management and supervision, differences in product, skills or type of work required, and functional integration of the employer's operation and geographic locations.

Overnite Transportation Company, supra; **Kalamazoo Paper Box**, 136 NLRB 134 (1962).

After analyzing each factor as it pertains to this matter, I conclude, for the reasons fully set forth below, that the petitioned-for unit is not an appropriate one. I find that the quick lane technicians share an overwhelming community of interest with the main service technicians sufficient to compel their inclusion in the petitioned-for unit. I also find that the five service porters share an overwhelming community of interest such that it would not be appropriate to separate one from the other four. Because the Petitioner and Employer agree that at least one of the service porters should be included in the unit determined and because this employee has the requisite community of interest with the petitioned-for main service technicians to permit such inclusion, I find that all five service porters should be included in the unit found appropriate. Further, the

apprentices in both the main service area and in the quick lane area have an overwhelming community of interest with the technicians in these areas.

Accordingly, I find that the appropriate unit must include all main service technicians, quick lane technicians, apprentices, and service porters.

A. Community of Interest Factors for the Main Service Technicians and Quick Lane Technicians

I note at the outset that the record does not show any bargaining history between the parties.

1. Work contacts between main service and quick lane

The Petitioner contends that one reason the main service technicians should comprise a separate unit is because the main service technicians and quick lane technicians are physically separated at the Employer's facility. As noted earlier, the facility is one large building divided by a main driveway through which vehicles enter. It appears that the main service area and the quick lane area also have separate bay doors that can be used to enter the facility. However, the evidence establishes that technicians frequently move between and work in the two areas and that the Parts and Services Director and Service Manager directly supervise the technicians in both areas.

The evidence shows that there is also frequent contact between the main service technicians and the quick lane technicians. The record establishes that certain equipment, specifically, the emissions testing machine on the quick lane side and the large lift on the main service side, are used by all technicians, as necessary. The record further establishes that when a large piece of equipment breaks down or is already in use on one side, the technicians will use the

equipment provided on the other side. The Parts and Service Director, a main service technician, and a quick lane technician all testified that many of the technicians in the main service area and quick lane area speak daily, or at least several times per week, about technical work-related matters. While the Petitioner argues that the main service technicians do not usually seek out the quick lane technicians for assistance, both because there are more main service technicians and because most of the main service technicians have a higher skill level, the fact remains that both classifications of technicians regularly communicate about work, regardless of who approaches whom.

2. Transfers between main service and quick lane

The evidence shows that there have been permanent transfers, in both directions, between the main service area and the quick lane area. While the Parts and Service Director testified that he categorized the quick lane work as generally being entry level, the record is clear that the Employer offers training for all technicians and the opportunity to move to the more complex work and higher wage rate of main service technician.¹³

There is no evidence on the record that main service technicians are temporarily transferred to work in the quick lane area or vice-versa for an entire day at a time. However, as discussed above, the evidence shows that both classifications of technicians have the need to use equipment on the other side,

¹³ Moreover, as noted above, the Parts and Services Director testified that one employee had transferred from the main service area to the quick lane area. Also, one highly skilled quick lane technician testified that he has remained in that area despite being qualified to be a main technician because he prefers the nature of the quick lane work and more frequent customer contacts.

depending on the type of job they are performing or based on equipment availability. Moreover, while it is clear that main service technicians normally perform the more complex work, the record shows that the main service technicians also regularly perform less complex tasks, including oil changes, tire rotations, and emissions tests, as part of their regular duties to “clear the ticket” of work to be accomplished on a particular vehicle.

Additionally, Parts and Services Director Marshall testified that, if all the quick lane technicians were busy and a customer needed an oil change or an emissions test, a main service technician would perform the work.¹⁴ This occurs at least several times per week.

3. Supervision

The Petitioner contends that the main service technicians and quick lane technicians are separately supervised, primarily because each area has its own Team Leader. However, the record shows that the Parts and Services Director and the Parts Manager are the only statutory supervisors in charge of running the service department. It is they who have the authority to hire, fire, and directly supervise all employees in the service shop, including the main service technicians, quick lane technicians, apprentices, and service porters at issue in this proceeding. While it is true that the main service area is lead by two Team

¹⁴ One Petitioner witness who works as a main service technician testified that this does not happen. Because this employee has worked for the Employer for only five months and because he is an experienced technician with multiple special certifications, I find that he likely would not be a first choice candidate to perform this comparatively unskilled work, and, thus, may simply be unaware of such assignments. Additionally, a second main service technician testified in this proceeding that he has been assigned oil and filter changes, brake jobs, and shock and strut replacements; all work that typically would have assigned to quick lane technicians, but for the fact that those employees were already busy.

Leaders and the quick lane area is lead by a separate Team Leader, I have found, that the Team Leaders are statutory employees under the Act and will be included in any unit found appropriate. Therefore, even though there are separate Team Leaders, the evidence establishes that both the main service technicians and quick lane technicians are supervised by the same two statutory supervisors, Marshall and Lanning.

4. Other Community of Interest Factors

An additional community of interest factor relates to training. In that regard, the Petitioner contends simply that the quick lane technicians do not train to the level that the main service technicians do. Regardless of the level of training that the technicians eventually receive, the record establishes that all main service technicians and quick lane technicians have access to the same in-house and outsourced training and the technicians from both areas are encouraged to seek such training. Further, the record shows that at least one quick lane technician is highly trained as a master technician with certifications identical those attained by main service technicians.

The record also establishes that the Employer has only a single apprenticeship program, which currently involves one apprentice in the main service area and two apprentices in the quick lane area. The Parts and Services Director testified that when apprentices complete their training, they are hired into whatever area is available, based upon the needs of the Employer.

The record establishes that the employee fringe benefits are the same for all employees. The Petitioner contends that there are such significant differences in the wages and hours of the main service technicians, as compared to those of the quick lane technicians, that exclusion of the quick lane technicians from the appropriate unit should be permitted. As already discussed above, the record shows wage range for the main service technicians is \$12-\$25 per hour and the wage range for the quick lane technicians is \$9-\$16 per hour.¹⁵ Thus, while the top of ranges differ by over 50%, it is clear that certain quick lane technicians earn more in hourly rate than certain main service technicians. In addition, all technicians are paid weekly and all technicians (except for the apprentices) are compensated for specific jobs performed at the same pre-determined flat rate of time applied against their particular hourly rate of pay. As to the hours of work, while the hours are somewhat different, I find that these insubstantial differences do not provide a basis for excluding the quick lane technicians from the unit found appropriate. Similarly, although there are slight differences in employee lunch periods, this does not negate the fact that both job classifications are entitled to lunch periods and all service department technicians take their breaks in the same area.

The record also shows that the uniforms the technicians wear are virtually identical, except for the insubstantial fact that the quick lane uniforms have patches on their work shirts that designate that they work in the quick lane area.

¹⁵ Not \$9-\$13 per hour, as is reflected in the Petitioner's brief.

All technicians are required to provide their own tools. The Petitioner maintains that the average value of a main service technician's tools is \$20,000, while the average value of a quick lane technician's tools is \$10,000. Even assuming there is some difference in the cost of one employee's set of tools versus another, it does not detract from the fact that all technicians must supply their own tools at substantial personal cost.

In summary as to the community of interest between the main service technicians and the quick lane technicians, I find that the community of interest between these two classifications is so overwhelming that exclusion of the quick lane technicians would be inappropriate. As support for this finding, I note that the Board in **Fletcher Jones Chevrolet**, 300 NLRB 875 (1990), (over the objection of the petitioner in that case) required the inclusion of "quick service technicians" into a unit of service technicians. The quick service technicians in that matter handled lubrication, oil and filter changes, belts, hoses, and other simple mechanical repair work, similar to the duties handled by the quick lane technicians in the matter now under consideration. The Board included the quick service technicians in the unit in **Fletcher Jones Chevrolet** because, although they were not as skilled as the other technicians, "they performed mechanical work." In that same case, the Board excluded the "get ready technicians" (who visually inspect automobiles and their accessories to ensure that they are working properly) and service advisors and quality control employees (both of which classifications must have some mechanical knowledge), because "they do not perform mechanical repairs." See also, **Dodge City of Wauwatosa, Inc.**,

282 NLRB 459 (1986) in which the Board, citing **American Potash & Chemical Corp.**, 107 NLRB 1418 (1954), found that lube and oil work employees should be included in what the Board determined to be a craft unit of service technicians.

The facts of the case presently under consideration are even more compelling in requiring the inclusion of the quick lane technicians in a unit with the main service technicians. In that regard, the quick lane technicians at the Employer's facility herein appear to perform more complicated tasks and to be more skilled than the quick service technicians in **Fletcher Jones Chevrolet** or the lube and oil work employees in **Dodge City of Wauwatosa**.¹⁶

B. Apprentices

The Board has long held that a craft unit consists of a distinct and homogeneous group of skilled journeymen craftsman who, together with helpers or apprentices, are primarily engaged in the tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. **Burns & Roe Services Corp.**, 313 NLRB 1307 (1994). See also, **American Potash**, *supra*. Under these cases, and because of an overwhelming community of interest shared with the other technicians, it is clear that the apprentices must also be included in the unit. Even assuming the technicians at issue did not constitute a true craft under Board law, it is clear that the apprentices, who progress into technician positions, should be grouped together with the technicians with whom they work, as they all

¹⁶ The Petitioner does not meaningfully distinguish either of these cases, but instead relied primarily on case law regarding the fact that weight should be given to the unit requested by the Petitioner. As noted above, once the petitioned-for unit is found to be inappropriate, the Board may consider the alternative requests of the parties and may also select an appropriate unit.

perform mechanical repairs on the same vehicles in the same area and under the same supervision. See, **Fletcher Jones Chevrolet**, supra., and **Dodge City of Wauwatosa**, supra.

C. Service Porters

The record is clear that the Petitioner is seeking to include one service porter, Ty Cook, and the Employer agrees that Cook has the requisite community of interest with the service department technicians to warrant his inclusion in any unit found appropriate. In light of the agreement of the parties and the community of interest shown between Cook and the service department technicians, Cook's inclusion in the unit is warranted.

The sole issue as to service porters is the Petitioner's desire that the four remaining service porters be excluded from the unit and the Employer's desire that they be included. Although none of the service porters testified, the record shows that the job descriptions, job qualifications, job duties, supervision, hours, wages, and benefits are identical for all five service porters. The only meaningful difference between Cook and the other four service porters is that Cook spends the majority of his time in the main service area.¹⁷ In fact, the Parts and Services Director who directly supervises Cook testified that Cook spends more than 90% of his time in the main service area. However, the record shows that Cook also performs his service porter duties in other areas of the Employer's premises, if

¹⁷ On brief the Petitioner describes Cook as being "assigned" to the main service department. However, the testimony in the record falls short of this assessment. Specifically, the record reflects the following testimony: Q: "...would it be fair to say that Ty is assigned to the service department and other employees kind of float or are they assigned to specific departments? A (by Marshall): "All the porters are service porters and are assigned to service so it's not—there is

needed; that all service porters assist each other “constantly” throughout the day; and that when Cook is absent, another service porter will take his place in the main service area. Accordingly, if one service porter is to be included, as the parties have agreed, they all must be included.

3. Conclusion

I find that the differences in hours, wages, and complexity of regular day-to-day duties between the main service technicians, the quick lane technicians, and the apprentices are dwarfed by the overwhelming community of interest discussed above. Additionally, the Petitioner has failed to show that separating one service porter from the other four service porters would be appropriate. Accordingly, I find that the unit argued for by the Employer is the smallest appropriate unit.

There are approximately 36 employees in the unit found appropriate.

DIRECTION OF ELECTION¹⁸

An election by secret ballot shall be conducted by the Undersigned among the employees in the Unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations.¹⁹ Eligible to vote are those in the unit who were employed during

no designation in regards to them being set up to quick lane or anything else. Service porters are designated for service, which is quick lane, main shop, so it's all the same...”

¹⁸ Although the unit found appropriate is broader than that initially sought by the Petitioner, I have administratively determined that the Petitioner has a sufficient showing of interest to warrant a direction of election in the broader unit. **N. Summergrade & Sons**, 121 NLRB 667 (1958).

¹⁹ Your attention is directed to Section 103.20 of the Board's Rules and Regulations. Section 103.20 provides that the Employer must post the Board's Notice of Election at least three full

the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

**INTERNATIONAL UNION OF OPERATING ENGINEERS
LOCAL NO. 9**

working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed. Please see the attachment regarding the posting of election notice.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Company**, 394 U.S. 759 (1969); **North Macon Health Care Facility**, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the **full** names and addresses of all the eligible voters shall be filed by the Employer with the Undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, National Labor Relations Board, 700 North Tower, Dominion Plaza, 600 Seventeenth Street, Denver, Colorado 80202-54533 on or before **May 28, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **June 4, 2004**. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

Dated at Denver, Colorado this 21st day of May 2004.

/s/ B. Allan Benson

B. Allan Benson, Regional Director
National Labor Relations Board, Region 27
600 Seventeenth Street
700 North Tower, Dominion Plaza
Denver, Colorado 80202-5433